Sustaining the Insolvency Reform Process in the MENA Region

FORUM ON INSOLVENCY REFORMS IN MENA

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Agenda

1. The need for Insolvency Reform Post crises
2. Task Force on Insolvency and Creditor/ Debtor Rights
3. Survey on Insolvency Systems in the MENA Region
4. Key Reform Areas
5. FIRM
6. Communique' on Insolvency and Debtor/Creditor Rights
7. Conclusion

The Need For Insolvency Reform Post Crises

The recent financial crises affected MENA countries through:

- Direct & Indirect exposure to foreign banks/financial institutions and investments and risks of sudden stop of capital flows;
- Contagion effects and exposure to global bond markets and external financing risks; and
- Crisis has induced a recession in US, EU, Japan leading to MENA vulnerability through real sector.

The Need For Insolvency Reform Post Crises

- Given MENA's exposure to the crisis, countries must take preventative measures to mitigate the economic & financial impact of the crisis.

- Effective insolvency systems, based on developed legal frameworks, relying on a sound judicial system and on the availability of lawyers and accountants experienced in insolvency proceedings, play a critical role for orderly exit of insolvent corporations and for the efficient reallocation of resources.

- Well established Insolvency regimes & Creditor Rights Systems and frameworks are a part of market infrastructure and are a key standard for sound financial systems.

Hawkamah-World Bank-INSOL-OECD Task Force

Hawkamah launched a Task Force on Insolvency and Creditor Rights System with the World Bank, INSOL and the OECD (duly supported by PwC and Korn/Ferry International)

Objectives

- Take stock of the Insolvency Regimes existing in the MENA countries
- Develop a MENA Policy Brief on Insolvency and Creditor Rights Framework
- Identify priorities and propose concrete policy recommendations.

Hawkamah-World Bank-INSOL-OECD Survey 2008

- 11 MENA Jurisdictions Insolvency Systems

DIFC	Palestine	
Egypt	Saudi Arabia	
Jordan	UAE	
Kuwait	Yemen	
Oman	Qatar	Lebanon

- Countries scored out of a total of 155 possible points

- Survey questionnaire responses filled by lawyers, insolvency professionals and governments

Takeaways From the Survey Gulf Vs Non Gulf States

- Gulf States have stronger Insolvency Laws in all but four areas namely:

1. Regulators Considerations (Practitioners)
2. Institutional Considerations (Judiciary)
3. Corporate Governance and
4. Credit Information Systems

- Both Gulf and Non Gulf States have room for improvement.
- DIFC Insolvency framework is robust and highest rated in the region.
- Given MENA's exposure to the crises, countries must take preventative measures to mitigate the economic impact of crises.
- Strengthening and Modernising Insolvency Laws is crucial to mitigate risks and effects of financial crises on MENA.

Survey Questionnaire

172 Questions covering the following topics:

Part A: Legal Framework for Creditor Rights

Part B: Risk Management and Corporate Workouts

Part C: Legal Framework for Insolvency

Part D: Re-organisation Proceedings

Part E: Implementation of the Insolvency Systems

Based on World Bank: Principles For Effective Insolvency and Creditor Rights Systems (revised) 2005

DIFC Score

- DIFC scored the most points in the **overall survey results (126 Points out of total 155 possible points; MENA** average 88).

- DIFC was the second highest scorer in the area of **contract avoidance. (89% positive answers provided;** the MENA Average is 65%).

- DIFC was the highest scorer in the area of **insolvency representatives. (86% positive answers provided; the** MENA Average is 65%).

- DIFC scored the second highest points in the area of **oversight management in reorganisations (80%** positive answers provided against the MENA Average of 45%).

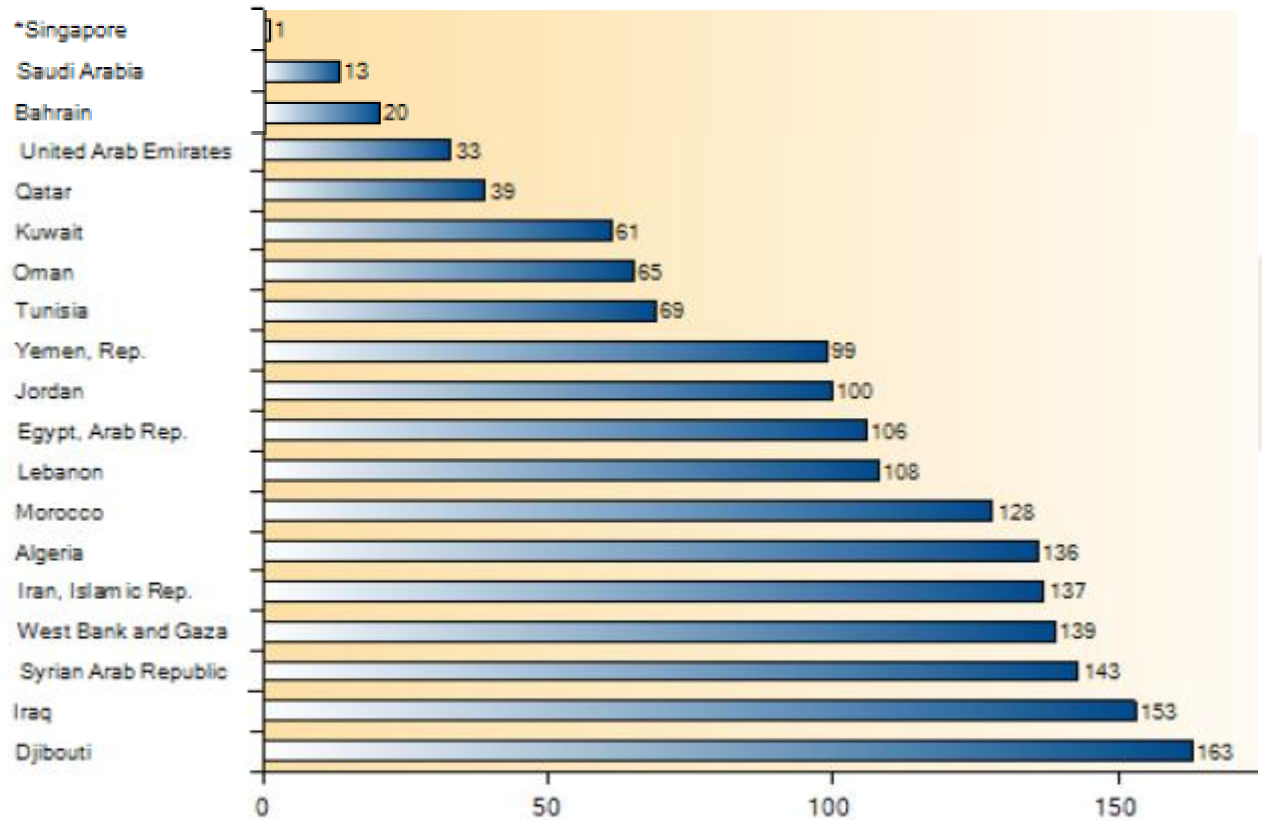
The World Bank Doing Business Report 2010

- The Doing Business indicators identify weaknesses in the bankruptcy law as well as the main procedural and administrative bottlenecks in the bankruptcy process.

- The Methodology covers three measures:

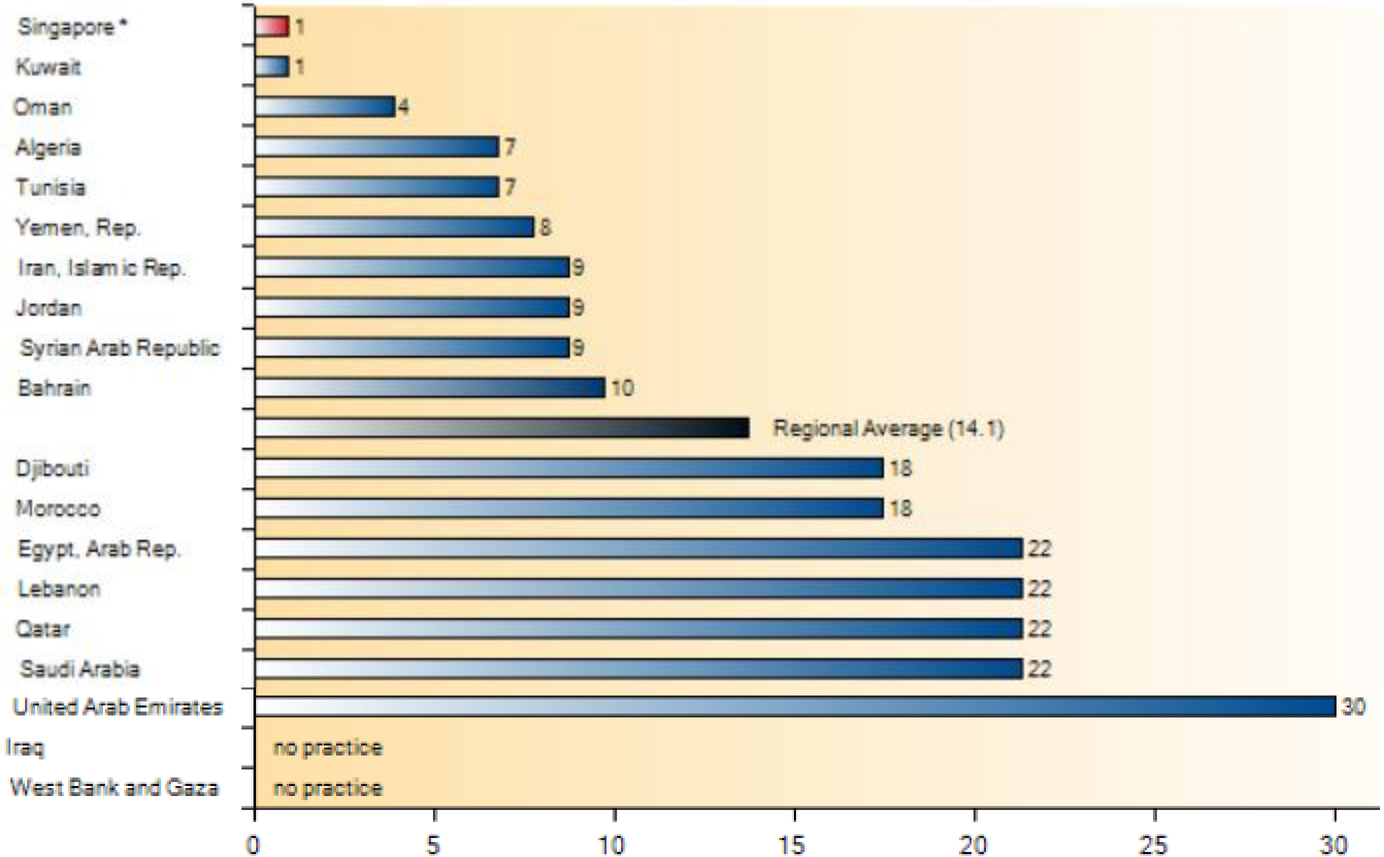
1. time to go through the insolvency process,
2. the cost to go through the process and
3. the recovery rate, how much of the insolvency estate is recovered by stakeholders, taking into account the time, cost, depreciation of assets and the outcome of the insolvency proceeding.

Time to go through Insolvency (years)



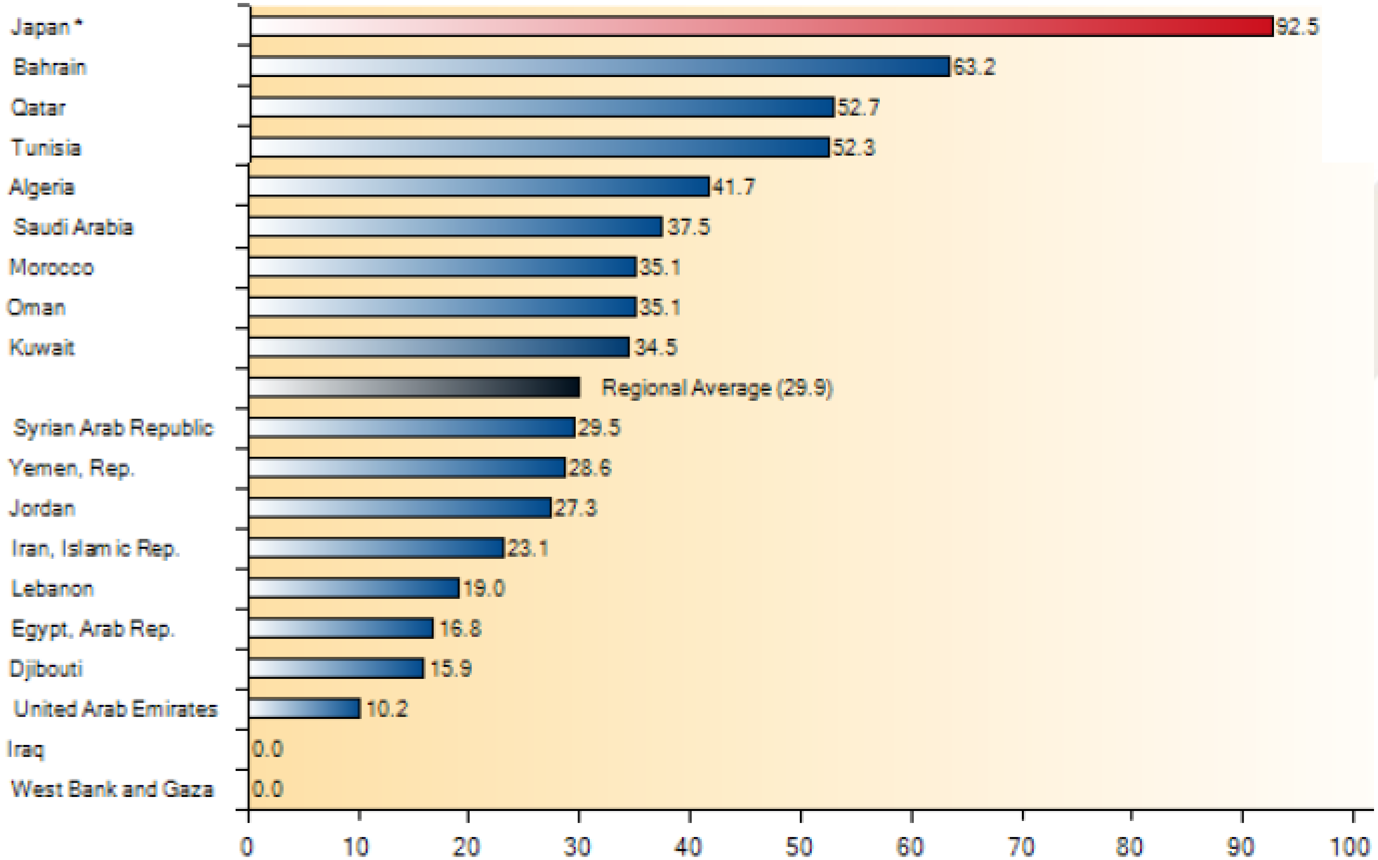
*The economy with the least time is included as a benchmark

Cost of Insolvency (%age of Estate)



*An economy with the lowest cost is included as a benchmark. Columbia, Kuwait and Norway also have the lowest cost to go through an Insolvency process.

Recovery rate (cents on the dollar)



*The economy with the highest recovery rate is included as a benchmark.

Closing a business Across Regions

Region	Time (years)	Cost (% of estate)	Recovery rate (cents of the dollar
Middle East & North Africa (MENA)	3.5	14.1	29.9
East Asia & Pacific (EAP)	2.7	23.2	28.4
Eastern Europe & Central Asia (ECA)	2.9	13.5	31.6
Latin America	3.2	13.9	29.7
Organization for Economic Co-Operation and Development (OECD)	1.7	8.4	68.6
South Asia (SA)	4.5	6.5	20.4

Instances of Standstill in Debt Repayments in the Region

In 2009, the U.A.E. witnessed a significant slowdown in growth and strains in the banking system as a result of the global financial crisis, the decline in oil prices, and the continuing fallout from the bursting of the Dubai property bubble.

Instances of Debt Repayments delay include cases of :

- Nakheel (USD3.52 billion Sukuk and USD 300 million loan installment)
- Damas (USD 165 Million debt)
- Saad and Al Gosaibi Group (USD 22 billion loan and 120 banks affected) and
- Dubai World (USD 59 billion in liabilities)

Sources: The National, Alroyya and Bloomberg

Response of the UAE Government

The UAE Government:

- Responded to the global financial crisis in a comprehensive and prompt manner maintaining confidence in the banking system through various emergency liquidity facilities, the guarantee of deposits, and measures to strengthen the banking sector;

- Increased spending on strategic infrastructure projects,

- After the debt announcement in November, reiterated that the debt of DW was not guaranteed by the GD, announced that a corporate restructuring was being designed in conjunction with the debt restructuring of part of DW liabilities, and initiated insolvency law reform; and

- Increased efforts to build statistical capacity.

Source:IMF UAE 2009 Article IV consultation

Dubai Government's Decree - The Dubai World Case

- H.H Sheikh Mohammed Bin Rashid Al Maktoum, Prime Minister of UAE and Ruler of Dubai, established a Tribunal and reorganization code to decide the disputes related to the settlement of the financial position of Dubai World and its subsidiaries.

- The Tribunal is composed of three judges from the DIFC Courts.

- The Tribunal will be governed by :

1. DIFC Law No (3) of 2009 Concerning the law of Insolvency,
2. The Regulations Issued by the Board of Directors of the DIFCA Concerning DIFC Insolvency Regulation,
3. DIFC Law No (10) of 2004 Concerning the Court of DIFC,
4. Legislation in force in the Emirate;
5. Commercial custom; and
6. Principles of justice, and rules of righteousness and equity.

Key Reform Areas

- Insolvency laws are outdated and inconsistent with modern business needs. Many countries still view the purpose of insolvency legislation as being limited to winding-up bankrupt companies, without providing an opportunity to revive them through restructuring.

- There is a strong stigma attached to the use of formal insolvency proceedings. As such, informal proceedings are often preferred.

- The courts in many countries lack the institutional capacity to effectively implement reorganization legislation.

- There is a need to develop special claim financial courts that would be able to facilitate adjudication of highly technical financial issues, particulary those treating to Insolvency laws

Key Reform Areas

- Residential real estate is the primary source of collateral for small business investment. Registries, for both immovable and moveable collateral need modernization.
- Enforcement of Insolvency Laws is a serious challenge in many countries.
- There is a lack of Credit Information Bureaus in the Region
- We need to develop local Credit Rating Agencies as they can provide a very valuable service to conduct risk assessments and credit ratings for companies and governments.

Forum For Insolvency Reforms In MENA (The FIRM)

- Hawkamah in association with the OECD, the World Bank, and INSOL International organised a regional Symposium on Insolvency Laws and Creditor Rights Systems on May 26-27, 2009 in Abu Dhabi

- The Symposium brought together officials and representatives from the MENA countries, confirmed the commitment of the organisers and participants to modernising insolvency regimes in the MENA region according to international best practices and standards.

- The Hawkamah Declaration was issued on May 27,2010 which resolved to **establish the FIRM**, a regional forum on insolvency and creditor rights which will aim to engage, educate, and inform stakeholders about the reform process and serve as a platform for sharing international and regional best practices.

Mandate of The FIRM

- To advance the objectives outlined in the Hawkamah Declaration
- To provide a strengthened ongoing platform to share information among policy advisors about reforms, capacity building and technical assistance initiatives for insolvency systems and creditor rights and related matters in the MENA region;
- To identify resource and priorities for Research on Insolvency;
- Assisting the development of an agenda for MENA Insolvency Policy reform (individual MENA country Policy reform);
- Building a regional policy constituency and commitment to reforms;

Mandate of The FIRM

- To focus on the practical implementation of reforms;
- Disseminating international and regional experiences, in order to increase the understanding for viable policy options relating to insolvency regimes;
- Engage the relevant stakeholders;
- Monitoring progress and helping to keep insolvency, restructuring and the related legal changes at the heart of reform efforts;
- Bringing together international, regional and country-level bodies engaged in insolvency reforms to learn from their expereinces.

FIRM Members

The founding members of FIRM include:

- Hawkamah
- INSOL International
- The World Bank
- IFC
- OECD

Further members will be invited to include UNCITRAL, IDB, DIFID,IMF, MEPI and other Institutions interested in the work of Insolvency for professional and technical assistance

Call to Action- Communiqué on Insolvency Feb 24, 2010

FIRM resolves to:

- Facilitate implementation of the policy reforms culminating out of the survey through the work of the FIRM;

- Acknowledge the benefits of sound insolvency systems for the efficient reallocation of resources;

- Engage market practitioners to study the effectiveness of Liquidation and Rescue process;

- Address issues relevant to Insolvency and Islamic Finance

Call to Action- Communiqué on Insolvency Feb 24, 2010

- Recognize the specific assistance to be provided by the FIRM members necessary to implement the mandate of the FIRM;

- Strengthen the institutional framework of insolvency regulators and judiciary;

- Call for the modernization of insolvency and debtor/ creditor rights systems in MENA according to international best practices and standards, however taking into account the specificities of the region.

Call to Action- Communiqué on Insolvency Feb 24, 2010

- Encourage policy makers to develop sound and efficient insolvency regimes in the region;

- Consider lowering financial reporting requirements, which affect the capacity of SMEs to access credit and to benefit from the insolvency process;

- Facilitate developing special claim financial courts that would be able to facilitate adjudication of highly technical financial issues, particularly those related to insolvency law;

Conclusion

- Market efficiency, and integrity, corporate governance and Insolvency frameworks and practices are organically linked.

- Evidence from both developed and emerging markets has shown that a sound insolvency framework and effective enforcement of creditor rights leads to improved access and greater breadth and dept of credit and financial markets.

- To date we have been able to weather the current global and economic financial crises.

- **We need to strengthen our insolvency regimes** and creditor rights to protect and help immunize our countries against future contagion effects and crises.